



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0784]

RIN 1625-AA00

Safety Zone, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Delaware River to restrict and protect vessel traffic during the offloading of two Post-Panamax gantry cranes at the Port of Philadelphia. This action is intended to protect mariners and vessels from the hazards associated with these offloading activities. Entry of vessels or persons into this zone is prohibited unless a vessel meets the stated requirements or is specifically authorized by the Captain of the Port Delaware Bay. This rule compliments a safety zone found in docket number USCG-2019-0782 addressing navigation risks while the vessel carrying the cranes is anchored or underway in Delaware Bay and River.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 15, 2019. For the purposes of enforcement, actual notice will be used from September 14, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0782 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271-4889, email Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The M/V ZHEN HUA 26 is transporting post-Panamax gantry cranes to ports within the United States. These large cranes extend beyond the width of M/V ZHEN HUA 26 on both sides of the vessel and create a navigational hazard to vessels operating within a certain proximity. The cranes are fastened in a manner which facilitates passage through the open ocean. Upon arrival to the Delaware River, M/V ZHEN HUA 26 will transit to anchorage and begin an approximately four day process of removing the sea fastenings. The M/V ZHEN HUA 26 will then proceed, conditions permitting, to berth at the Port of Philadelphia Greenwich Terminal where it will offload the cranes. Because offloading the cranes requires precise environmental conditions which passing traffic could disrupt, and with the consequences of failure being catastrophic to those in

proximity to the operation, the facility, and the waterway, we are establishing a safety zone around the vessel while it is preparing for and conducting the operation to offload the cranes.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the anticipated arrival of M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone. The rule must be in force by September 14, 2019, to serve its purpose of ensuring the safety of waterway users and the general public from hazards associated with the offloading of post-Panamax gantry cranes with the Delaware Bay Captain of the Port Zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with the offloading of the post-Panamax gantry cranes.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the offloading of the post-Panamax gantry cranes. These potential hazards will be a safety concern for anyone transiting navigable waters of the Delaware River bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53'41" N, 075°08'19" W, thence east-southeast to the New Jersey Shoreline at 39°53'34" N, 075°07'49" W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on all waters of the Delaware River bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53'41" N, 075°08'19" W, thence east-southeast to the New Jersey Shoreline at 39°53'34" N, 075°07'49" W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge. This safety zone is needed to protect personnel and vessels, in the navigable waters within the safety zone as well as persons on the adjacent shoreline during offloading of two Post-Panamax gantry cranes. This safety zone will be enforced for approximately seven days beginning from the time the M/V ZHEN HUA 26 arrives at berth at Greenwich Terminal until the vessel departs from the terminal, unless cancelled earlier by the COTP Delaware Bay. Enforcement of the safety zone will be announced via broadcast notice to mariners.

Vessels will be able to transit through the safety zone without permission from the COTP Delaware Bay if they meet the following requirements: (1) transit through the safety zone at the minimum safe speed to reduce wake and maintain steerage, (2) except

for towing vessels designated as assist tugs and operating in such capacity, do not overtake, meet, or otherwise pass any other unmoored or unanchored vessel while transiting through the safety zone, and (3) regardless of travel direction, vessels shall remain east of the centerline of the main navigation channel. The centerline is depicted on U. S. Electronic Navigational Chart US5PA12M and is a line drawn approximately from 39°53'39" N, 075°08'11" W, thence north-northeast to approximate position 39°54'20" N, 075°07'54" W. Vessels which do not meet all of the requirements listed above will be prohibited from entering or transiting the safety zone without prior approval of the COTP Delaware Bay. Vessels requesting to enter or transit the safety zone may contact the Sector Delaware Bay Command Center via VHF-FM channel 16.

Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to

OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the short duration and traffic management of the safety zone. This rule will allow for vessels to transit through the safety zone while the M/V ZHEN HUA 26 moored at Greenwich Terminal in Port of Philadelphia, Pennsylvania if certain requirements are met, and the Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone. For these reasons, the impact on waterway traffic is expected to be minimal.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or

email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to be enforced only during the offload of a vessel carrying post-Panamax gantry cranes. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0784, to read as follows:

§ 165.T05-0784 Safety Zone, Delaware River, Philadelphia, PA

(a) **Location.** The following area is a safety zone: All navigable waters bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53'41" N, 075°08'19" W, thence east-southeast to the New Jersey shoreline at 39°53'34" N, 075°07'49" W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(b) **Definitions.** As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer

designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) In accordance with the general safety zone regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, unless moored or anchored outside the main navigational channel, contact the COTP or the COTP's representative via VHF-FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) Vessels may transit the safety zone described in paragraph (a) of this section if all of the following criteria are met:

(i) Vessel shall maintain the minimum safe speed to reduce wake and maintain steerage.

(ii) Except towing vessels designated as assist tugs and operating in such capacity, no vessel may meet, overtake or otherwise pass another unmoored or unanchored vessel within the safety zone.

(iii) Regardless of travel direction, vessels shall remain east of the centerline of the main navigation channel. The centerline is depicted on U. S. Electronic Navigational Chart US5PA12M and is a line drawn approximately from 39°53'39" N, 075°08'11" W, thence north-northeast to approximate position 39°54'20" N, 075°07'54" W.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. Enforcement of the safety zone will begin when the M/V ZHEN HUA 26 arrives at berth at the Greenwich Terminal in the Port of Philadelphia, Pennsylvania and end at midnight on October 15, 2019.

Dated: September 11, 2019.

Scott E. Anderson,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.

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